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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

LINDA CLARK)	Case No. EDCV 06-00446-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

I. Factual and Procedural Background

This is an action for judicial review of the Commissioner's final decision denying Plaintiff's application for Social Security Disability benefits.

Plaintiff Linda Clark was born on June 21, 1957, and has an eleventh-grade education. (Administrative Record ("AR") 57, 69.) She has worked as a driver for various organizations, as well as a cashier and deli worker. (AR 69.) Plaintiff's driving positions often included additional duties such as lifting boxes and adjusting and lifting

1 wheelchairs. Over time, Plaintiff developed carpal tunnel syndrome and
2 pain in her upper extremities which required multiple surgeries.

3 On June 5, 2003, Plaintiff filed an application for Social Security
4 Disability Insurance Benefits, claiming an onset disability date of
5 January 12, 2000. (AR 57, 65.)¹ The Commissioner denied Plaintiff's
6 application initially and upon reconsideration. (AR 35-38, 41-44.)
7 Plaintiff timely filed a Request for Hearing, and a hearing was held on
8 November 16, 2004, before Administrative Law Judge ("ALJ") Frederick J.
9 Graf. (AR 13, 20.) The ALJ was required to determine whether, since
10 January 12, 2000, Plaintiff has been disabled for a period that has
11 lasted or can be expected to last for a period of at least twelve
12 months. (Id.)

13 In a decision issued December 13, 2004, the ALJ found that
14 Plaintiff was not disabled during the relevant time period. (AR 20.) The
15 ALJ made specific findings that Plaintiff is severely impaired, within
16 the meaning of the Social Security Act, due to upper extremity and back
17 pain, and status post multiple bilateral carpal tunnel release and ulnar
18 release surgeries; that Plaintiff's impairments do not meet or medically
19 equal any of the listed impairments; that Plaintiff retains the residual
20 functional capacity ("RFC") to perform the full range of light work; and
21 that under the Medical-Vocational Guidelines Plaintiff is not disabled.
22 (AR 19.)

23 Plaintiff timely filed a Request for Review of the ALJ's decision.
24 The Appeals Council denied review on April 22, 2006. (AR 4-6.) Plaintiff
25 filed the instant action, claiming that the ALJ erred by: 1) failing to

26
27 ¹ Plaintiff had filed an earlier application for benefits on
28 September 11, 1998. The claim was denied at the initial level of review
on January 7, 1999 and not pursued further. (AR 13.)

1 properly consider the opinions of multiple physicians in determining
2 Plaintiff's RFC; and 2) failing to properly consider Plaintiff's
3 subjective complaints of pain. (Jt. Stip. 3.)

4 5 **II. Standard of Review**

6 Under 42 U.S.C. § 405(g), a district court may review the
7 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
8 findings and decision must be upheld if it is "supported by 'substantial
9 evidence' and if the proper legal standard was applied." *Mayes v.*
10 *Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). Substantial evidence
11 means such evidence as a reasonable person might accept as adequate to
12 support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);
13 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more
14 than a scintilla, but less than a preponderance. *Robbins v. Soc. Sec.*
15 *Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). To determine whether
16 substantial evidence supports a finding, the reviewing court "must
17 review the administrative record as a whole, weighing both the evidence
18 that supports and the evidence that detracts from the Commissioner's
19 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If
20 the evidence can support either affirming or reversing the ALJ's
21 conclusion," the reviewing court "may not substitute its judgment for
22 that of the ALJ." *Robbins*, 466 F.3d at 882.

23 24 **III. Medical Evidence of Residual Functional Capacity**

25 A claimant's RFC is what she is capable of doing despite her
26 physical and mental limitations. 20 C.F.R. § 404.1545(a)(1); *Cooper v.*
27 *Sullivan*, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). "RFC is an assessment
28 of an individual's ability to do sustained work-related physical and

1 mental activities in a work setting on a regular and continuing basis."
2 SSR 96-8p, 1996 WL 374184, at *1 (S.S.A. July 2, 1996).² A RFC assessment
3 is ultimately an administrative finding reserved to the Commissioner. 20
4 C.F.R. § 404.1527(e)(2). However, an RFC determination is based on all
5 of the relevant evidence, including the diagnoses, treatment,
6 observations, and opinions of medical sources, such as treating and
7 examining physicians. Id.

8 The ALJ concluded that Plaintiff retains the RFC to perform light
9 work. Specifically, the ALJ found that Plaintiff:

10 retains the ability to lift and carry 20 pounds occasionally
11 and 10 pounds frequently. She is able to sit, stand, and/or
12 walk for about six hours in an 8-hour day with normal breaks.
13 However, her ability to handle and finger (gross and fine
14 manipulation) including forceful gripping, twisting, picking
15 and pinching, is limited to a frequent basis.

16 (AR 19.)

17 In reaching this conclusion, the ALJ accepted the specific
18 opinions of the following three physicians:

19 1) Dr. James D. Matiko, an orthopedic surgeon, examined
20 Plaintiff on October 14, 1999. In a written report, Dr.
21 Matiko reviewed Plaintiff's medical history and the
22 findings from the medical exam, and opined that Plaintiff
23 is precluded from repetitive forceful gripping and
24

25 ² "The Secretary issues Social Security Rulings to clarify the
26 Secretary's regulations and policy....Although SSRs are not published in
27 the federal register and do not have the force of law, [the Ninth
28 Circuit] nevertheless give[s] deference to the Secretary's
interpretation of its regulations." *Bunnell v. Sullivan*, 947 F.2d 341,
346 n.3 (9th Cir. 1991) (en banc).

1 grasping, prolonged keyboard activity, prolonged writing,
2 and repetitive pushing and pulling bilaterally. (AR 252-
3 60.)

4 2) Dr. Prabhu Dhalla, an orthopedic surgeon, treated
5 Plaintiff for an extended period of time and performed
6 multiple surgeries. On May 10, 2002, Dr. Dhalla issued a
7 report stating that Plaintiff should be restricted from
8 heavy lifting or heavy pushing and pulling, and also from
9 performing repetitive gripping, grasping or fingering
10 with both hands. (AR 274-79.) On November 5, 2002, in
11 reference to a specific job opening available to
12 Plaintiff, Dr. Dhalla issued another report stating that
13 Plaintiff was capable of carrying 10 pounds frequently
14 and 10 to 20 pounds occasionally, simple grasping
15 occasionally, firm grasping occasionally, and fine
16 manipulation and movements of the wrist with both hands
17 occasionally. (AR 269.)

18 3) Dr. Thomas J. Sabourin, an orthopedic surgeon, examined
19 Plaintiff. In report written on August 4, 2003, Dr.
20 Sabourin reviewed Plaintiff's medical history and the
21 findings from the medical exam, and opined that Plaintiff
22 could lift and carry 10 pounds frequently and 20 pounds
23 occasionally. (AR 322-26.)

24 Plaintiff contends that the ALJ erred in determining Plaintiff's
25 RFC in three ways. First, Plaintiff argues that the ALJ's RFC
26 determination did not accurately reflect the medical opinions of Drs.
27 Matiko and Dhalla. Second, Plaintiff argues that the ALJ improperly
28 rejected the opinions of two other physicians regarding Plaintiff's

1 physical limitations. Third, Plaintiff maintains that it was legal error
2 for the ALJ to choose not to obtain the testimony of a medical expert.
3 (Jt. Stip. 3-6.)

4 **A. Discussion**

5 It is the responsibility of the ALJ to resolve conflicts and
6 ambiguities in the medical record and determine credibility. *Meanel v.*
7 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999); *Andrews v. Shalala*, 53 F.3d
8 1035, 1039 (9th Cir. 1989). Thus, the ALJ determines which medical
9 opinions should be given the most weight in light of the general rule in
10 this circuit that, among the three types of physicians—(1) treating
11 physicians, i.e., those who treat the claimant; (2) examining
12 physicians, i.e., those who examine but do not treat; and (3) non-
13 examining physicians, i.e., those who neither examine nor treat—the most
14 weight should be given to the opinion of a treating source. *Lester v.*
15 *Chater*, 81 F.3d 821, 830 (9th Cir. 1996). An ALJ should accordingly give
16 deference to a treating medical source's opinion as to the nature and
17 severity of an impairment if it is well supported and not inconsistent
18 with other substantial evidence. SSR 96-2p, 1996 WL 374188, at *1
19 (S.S.A. July 2, 1996). This is "[b]ecause treating physicians are
20 employed to cure and thus have a greater opportunity to know and observe
21 the patient as an individual...." *Smolen v. Chater*, 80 F.3d 1273, 1285
22 (9th Cir. 1996).

23 **B. Analysis**

24 **1. Medical Opinions of Drs. Matiko and Dhalla**

25 Although the ALJ explicitly embraced the medical opinions of Drs.
26 Matiko and Dhalla, Plaintiff in essence argues that the ALJ erred by
27 failing to actually incorporate their opinions into his RFC finding.
28 Plaintiff contends that the ALJ failed to account for Dr. Matiko's

1 opinion that Plaintiff is "precluded from repetitive forceful gripping
2 or grasping, prolonged keyboard activity, and prolonged writing. She is
3 also precluded from repetitive pushing and pulling bilaterally." (Jt.
4 Stip. 4.)

5 Plaintiff also contends that the ALJ failed to account for Dr.
6 Dhalla's statement, "The patient would also be precluded from activities
7 that require repetitive elbow flexion and extension." (AR 278.)
8 Plaintiff argues that these portions of the medical opinions lead to a
9 more limited upper extremity RFC.

10 Contrary to Plaintiff's assertion, the ALJ's RFC determination is
11 consistent with the specific opinions cited by Plaintiff. The ALJ
12 repeated the same statements cited by Plaintiff, nearly verbatim, before
13 concluding that Plaintiff can lift 10 pounds frequently and that the use
14 of her hands is limited to a frequent basis. The ALJ's determination
15 that Plaintiff is capable of *frequent* use of her hands is not
16 inconsistent with Dr. Matiko's opinion that Plaintiff is precluded from
17 *repetitive* use of her hands. Repetitive use of the hands connotes
18 completion of the same task, again and again, requiring the same type of
19 motion, while frequent use of the hands requires the completion of a
20 variety of tasks at short intervals. Repetitive movements would more
21 severely strain the wrists and hands than frequent movements.

22 And while Dr. Dhalla opined that Plaintiff should not engage in
23 "repetitive elbow flexion and extension," she may still have the
24 physical capacity to lift 10 pounds frequently and 20 pounds
25 occasionally. This conclusion is supported by a report issued by Dr.
26 Dhalla a few months later, in which she stated that Plaintiff is capable
27 of performing at a job that would require carrying 10 pounds frequently
28 and 10 to 20 pounds occasionally. Plaintiff has not even suggested why

1 a restriction on Plaintiff's repetitive use of her elbow would restrict
2 her ability to lift beyond the RFC determined by the ALJ.

3 The ALJ did not improperly reject the opinions of Drs. Matiko and
4 Dhalla. The ALJ accepted their opinions, and made an RFC determination
5 accordingly.

6 **2. Medical Opinions of Drs. Tiedeman and Wang**

7 Plaintiff maintains that the ALJ improperly disregarded the medical
8 opinions of two other physicians. Dr. G.E. Tiedeman, a state agency
9 reviewing physician, completed a Residual Functional Capacity Assessment
10 on January 4, 1999, in which he stated that Plaintiff is limited to
11 occasional handling and fingering with the left hand, and is "capable of
12 one-armed light work." (AR 212, 215.) Dr. Weijia Wang, a neurologist who
13 examined Plaintiff on November 21, 1998, stated that Plaintiff "should
14 avoid frequent carrying and lifting with both hands. She should avoid
15 carrying heavy objects and could probably carry about 5-10 pounds but
16 should avoid frequent carrying and handling until these problems are
17 addressed and resolved."

18 The ALJ makes no mention of the findings or opinions of either
19 physician, but he is not obligated to. The ALJ need not address all
20 evidence in the administrative record, but only significant, probative
21 evidence. *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995);
22 *Vincent v. Heckler*, 739 F.2d 1393, 1394 (9th Cir. 1984). In light of
23 Plaintiff's treatment history, neither opinion was significant or
24 probative.

25 Both reports were issued prior to the alleged disability onset date
26 of January 12, 2000. As the ALJ noted, Plaintiff had three repeat
27 surgeries after the onset date: repeat left elbow surgery in September
28 2000, repeat right elbow surgery in February 2001, and repeat right

1 carpal tunnel release in December 2001. (AR 16.) With the intervening
2 surgeries and other medical treatment that Plaintiff received, the
3 opinions of Drs. Tiedeman and Wang no longer reliably describe
4 Plaintiff's condition.

5 The ALJ instead relied on the findings and opinions of physicians
6 who worked more closely with Plaintiff during the relevant time period.
7 The ALJ summarized the findings of Drs. Bryan Leung and John Gonzalez,
8 who treated Plaintiff prior to the alleged onset date, then reviewed the
9 reports of at least five physicians who treated or examined Plaintiff
10 after the onset date, explaining how Plaintiff's condition progressed
11 over the relevant time period. The ALJ properly discussed the medical
12 documentation of every physician during the relevant this time, and
13 based his decision on the evidence. The ALJ was not additionally
14 required to specifically discuss every outdated report and explain why
15 they were no longer relevant.

16 The ALJ did not err by disregarding the opinions of Drs. Tiedeman
17 and Wang cited by Plaintiff.

18 **3. Medical Expert Testimony**

19 Plaintiff argues that the ALJ also erred by failing to obtain
20 medical expert testimony concerning Plaintiff's upper extremity
21 limitations. (Jt. Stip. 6.) The regulations give an ALJ discretion to
22 "ask for and consider opinions from medical experts on the nature and
23 severity" of a claimant's impairments. 20 C.F.R. § 404.1527(f)(2)(iii).
24 The regulations do not require the ALJ to obtain expert medical
25 testimony under any specified circumstance, nor has Plaintiff cited any
26 authority in support of this proposition. The ALJ did not err by
27 determining Plaintiff's RFC based on the medical record, without the
28 additional testimony of a medical expert.

1 **IV. Plaintiff's Subjective Complaints of Pain**

2 In her application for benefits, Plaintiff complained of pain and
3 numbness in her hands and arms. (AR 65, 74.) Plaintiff continued to
4 complain of pain in her hands and arms, as well as her back, at multiple
5 medical examinations. (E.g., AR 90-93.) Plaintiff also testified at the
6 administrative hearing that she is unable to lift a gallon of milk with
7 one hand due to pain, and that the pain she experiences in her
8 shoulders, arms, and hands is so severe that she is not able to sit or
9 stand for an extended period of time. (AR 390-95.)

10 The ALJ found that, although Plaintiff has a medically determinable
11 impairment that could reasonably cause pain, the Plaintiff's
12 representation of the intensity, persistence, and limiting effect of
13 such pain was not credible. (AR 16.) Plaintiff claims that the ALJ erred
14 by failing to properly discredit her complaints.

15 **A. Discussion**

16 "[O]nce the claimant produces objective medical evidence of an
17 underlying impairment, an adjudicator may not reject a claimant's
18 subjective complaints based solely on a lack of objective medical
19 evidence to fully corroborate the alleged severity of pain." *Bunnell*,
20 947 F.2d at 345. To the extent that an individual's claims of functional
21 limitations and restrictions due to the alleged pain are reasonably
22 consistent with the objective medical evidence and other evidence in the
23 case, the claimant's allegations will be credited. SSR 96-7p, 1996 WL
24 374186, at * 2 (S.S.A. July 2, 1996) (explaining 20 C.F.R. §§
25 404.1529(c)(4), 416.929(c)(4)). Unless there is affirmative evidence
26 showing that the claimant is malingering, the ALJ must provide clear and
27 convincing reasons for discrediting a claimant's complaints. *Robbins*,
28 466 F.3d at 883.

1 Social Security Regulation 96-7p identifies the types of evidence
 2 that may be used, in addition to the objective medical evidence, to
 3 assess a claimant's credibility.³ For example, an ALJ may discredit a
 4 claimant's testimony if she engages in daily activities that are
 5 inconsistent with her allegations. *Bunnell*, 947 F.2d at 346. "Another
 6 relevant factor may be 'unexplained or inadequately explained, failure
 7 to seek treatment or follow a prescribed course of treatment.'" *Id.*
 8 (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). The ALJ may
 9 also use "ordinary techniques of credibility evaluation, such as
 10 considering the claimant's reputation for truthfulness and any
 11 inconsistent statements in her testimony." *Tonapetyan v. Halter*, 242
 12 F.3d 1144, 1148 (9th Cir. 2001) (internal quotations omitted). "General
 13 findings are insufficient; rather, the ALJ must identify what testimony
 14 is not credible and what evidence undermines the claimant's complaints."
 15 *Reddick*, 157 F.3d at 722 (quoting *Lester v. Chater*, 81 F.3d 821, 834
 16 (9th Cir. 1996)).

17 //

19 ³ SSR 96-7p lists seven types of evidence:
 20 1. The individual's daily activities;
 21 2. The location, duration, frequency, and intensity of the
 22 individual's pain or other symptoms;
 23 3. Factors that precipitate and aggravate the symptoms;
 24 4. The type, dosage, effectiveness, and side effects of any
 25 medication the individual takes or has taken to alleviate pain
 26 or other symptoms;
 27 5. Treatment, other than medication, the individual receives or
 28 has received for relief of pain or other symptoms;
 6. Any measures other than treatment the individual uses or has
 used to relieve pain or other symptoms (e.g., lying flat on
 his or her back, standing for 15 to 20 minutes every hour, or
 sleeping on a board); and
 7. Any other factors concerning the individual's functional
 limitations and restrictions due to pain or other symptoms.
 SSR 96-7p, 1996 WL 374186, at * 3.

1 **B. Analysis**

2 As the ALJ acknowledged, Plaintiff satisfied the initial
3 requirement announced in *Bunnell* by presenting objective medical
4 evidence of an underlying impairment. The ALJ was therefore required to
5 provide clear and convincing reasons for discrediting Plaintiff's
6 complaints.

7 The ALJ did not err in finding that Plaintiff's complaints were not
8 credible. The ALJ offered five bases for his conclusion, all of which
9 are legitimate: 1) the alleged pain was disproportionate to the clinical
10 and diagnostic findings, *Rollins v. Massanari*, 261 F.3d 853, 857 (9th
11 Cir. 2001) ("While subjective pain testimony cannot be rejected on the
12 sole ground that it is not fully corroborated by objective medical
13 evidence, the medical evidence is still a relevant factor in determining
14 the severity of the claimant's pain and its disabling effects.") (citing
15 20 C.F.R. § 404.1529(c)(2)); 2) Plaintiff's complaints were not always
16 consistent, *Tonapetyan*, 242 F.3d at 1148; 3) Plaintiff did not always
17 take her pain medication as prescribed, *Bunnell*, 947 F.2d at 346; 4)
18 there were long gaps of time between Plaintiff's visits to the doctor to
19 receive treatment for the pain, *Bunnell*, 947 F.2d at 346; and 5) the
20 record reveals some weight loss but no diffuse muscle atrophy or muscle
21 wasting, which are common side effects of chronic pain, *Rollins*, 261
22 F.3d at 857. (AR 16-17.)

23 Any one of these reasons, taken in isolation, may provide a weak
24 rationale for discrediting Plaintiff. But taken together, they provide
25 a proper basis for the ALJ's decision for rejecting Plaintiff's
26 testimony. "[T]he ALJ's interpretation of her testimony may not be the
27 only reasonable one. But it is still a reasonable interpretation and is
28 supported by substantial evidence; thus, it is not [the Court's] role to

1 second-guess it." *Rollins*, 261 F.3d at 857.

2
3 **V. Conclusion**

4 For the reasons stated above, it is **ORDERED** that the decision of
5 the Commissioner be affirmed and this case dismissed with prejudice.

6
7 DATED: February 26, 2007



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9
10 _____
MARC L. GOLDMAN
United States Magistrate Judge